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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,150	11/25/2003	Jacques Lobry	BDL-54	7023
20311	7590	06/30/2004	EXAMINER	
MUSERLIAN AND LUCAS AND MERCANTI, LLP 475 PARK AVENUE SOUTH NEW YORK, NY 10016			LUU, TUYET PHUONG PHAM	
		ART UNIT	PAPER NUMBER	
		3673		

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/722,150	LOBRY ET AL.	
	Examiner	Art Unit	
	Teri P. Luu	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 November 2003.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-10 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/25/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites “slats being supported at their ends by a fixing means engaging the longitudinally-extending members of the frame”. A second fixing means is recited in line 9, e.g., “fixing means for fixing said device to the upper slats”. It is unclear which “fixing means” is being referred to in lines 11-16.

As concerns claim 6, the claim depends from itself.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No.6,219,863 to Loberg et al. in view of DE 197 18 577 to Inhoffen.

Loberg et al. discloses a single piece tension-varying slider for a set of three slats (41) in a bed base, the set comprising two parallel slats in the plane on which the mattress rests together

with a lower slat disposed substantially in the vertical midplane between the two upper slats (see Fig. 7), said slats being supported at their ends by fixing means (60) engaging the longitudinally-extending members (25) of the frame (21) of the bed base, said slider comprising a suspension device (76) for bearing against the lower slat, and fixing means (70) for fixing said device to the upper slats; wherein the fixing means comprise a strip (71) for being placed across and over said upper slats.

Loberg fails to teach the strip having a respective bend at each of its ends for cooperating with respective outer edges of said two upper slats. Inhoffen discloses a single piece tension varying slider for three slats comprising a bends for cooperating with respective outer edges of the two upper slats. In order to more securely retain the upper slats to the slider, one of ordinary skill in the art would have found it obvious to provide the fixing means with bends which cooperate with the outer edges of the two upper slats.

Loberg, as modified, disclose one of the bends being connected to the suspension device by a junction wall (i.e., the wall between the grooves 72, 73).

As concerns claim 5, the bends prevent the suspension device from moving under the upper slats.

As concerns claim 9, the suspension device is in the form of a sleeve, see Figs. 6 and 7.

Claims 2 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loberg et al. in view of Inhoffen as applied to claim 1 above, and further in view of DE 298 10 728.

As concerns claim 2, Loberg, as modified, fails to teach catch means for preventing the suspension device from moving on the lower slat. German patent '298 discloses a single piece tension-varying slider comprising a suspension device having a catch (11) for preventing the device from moving on the lower slat. It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Loberg, in view of DE '298, by providing the suspension device with a catch and the slats with holes for receiving the catch, so as to prevent the device form moving on the lower slat.

As concerns claim 10, Loberg, as modified, discloses the claimed invention, except it is silent as to the material of the slider. The German patent discloses a single piece tension-varying slider formed of a rubber-like flexible material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the slider from an elastomeric material in order to provide flexibility to the slider so that it can bend with the slats.

Allowable Subject Matter

Claims 3, 4 and 6-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Teri Pham Luu** whose telephone number is (703) 305-7421. The examiner can be best reached Monday-Friday from 6:30 am to 2:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Heather Shackelford**, can be reached at **(703) 308-2978**.

Submission of your response by facsimile transmission is encouraged. Technology Center 3600's facsimile number for all official papers is **(703) 872-9306**. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see MPEP § 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check should not be submitted by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP § 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. _____) on _____

(Typed or printed name of person signing this certificate)

(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP § 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Art Unit: 3673

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be directed to **heather.shackelford@uspto.gov**.

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed expressed waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Teri Pham Luu
Primary Examiner

tpl
June 23, 2004